
1988-1989 ANNUAL REPORT

April 1, 1988–March 31, 1989

Human Rights

A Responsibility
We all share.

British Columbia Council of Human Rights

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Council of Human Rights
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**Province of
British Columbia**

**British Columbia
Council of
Human Rights**

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The Honourable Norman Jacobsen
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, British Columbia

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the British Columbia Council of Human Rights for the period April 1, 1988 to March 31, 1989.

John I. D. Joe
Chairman



Remarks From the Chairman

During this reporting period, the Council took an increasingly active role in the community to better fulfill its mandate. Public education continues to be an important aspect of the Council's work. This includes an on-going dialogue with the public about the importance of protecting human rights as the Council works to achieve the goal of eliminating prohibited forms of discrimination in the province. Speaking engagements, publications and school projects helped to inform the public about the work of the Council. A major initiative this year was the first step to co-ordinate a communications plan with local governments in an attempt to involve them in promoting and protecting human rights.

The Council celebrated the Fortieth Anniversary of the signing of the Universal Declaration of Human Rights this year. This document is fundamental to the aspiration of the United Nations to create a world free of discrimination in all its forms. Our participation in these ceremonies is indicative of our broader interest, on behalf of the Province of British Columbia, in the global need for the protection of human rights. The Council published a newsletter on the subject and co-ordinated the British Columbia participation in a nation-wide student poster and essay contest.

The Council is preparing to host the seventeenth annual conference of the Canadian Association of Statutory Human Rights Agencies (CASHRA) which will be held in June 1989 in Victoria. For the first time, CASHRA has decided to open the conference to the public, creating a forum within which interested persons and groups can learn about the role of human rights agencies across Canada. CASHRA also recognizes that public input into the activities of agencies is essential to fostering a better understanding of pressing human rights issues.

Included in this year's annual report is a brief report on discrimination against persons with disabilities. The Council acknowledges both the need to increase awareness about the rights of persons with disabilities and the responsibilities that all individuals have towards achieving full participation by persons with disabilities in all aspects of life.

Of importance this year was the first human rights tribunal decision with respect to AIDS in Canada. In *Biggs and Cole v. Hudson* the Council's Member Designate held that AIDS is a physical disability for the purposes of the *Human Rights Act*. The protection for persons with AIDS is also extended to persons who are perceived to have AIDS.

The Council will increase its contact with the public and community groups. We believe that to truly fulfil our mandate, better public education about human rights issues is essential. Greater understanding of human rights concerns by the citizens of British Columbia is necessary to better serve the goal of eliminating discrimination in the province.

I would like to take this opportunity to thank the Council, staff, Industrial Relations Officers and all other persons who have worked to further the principles of human rights during this past year.

John I. D. Joe
Chairman



I The Administration of Human Rights in British Columbia

(a) Mandate of the Council

The British Columbia Council of Human Rights was created in September 1984 upon the proclamation of the British Columbia *Human Rights Act*. Since 1984, human rights complaints have been received, investigated and adjudicated by the Council. This administrative agency is mandated to review allegations of discrimination in an impartial manner and, where necessary, hold a hearing into the matter.

"Discrimination" is best described as evaluating an individual as a member of an identifiable group and treating that individual differently because they belong to that group and not on individual merit. The Abella Report on Equality in Employment, prepared by Judge Abella for the Royal Commission on Equality (Order in Council P.C. 1983-1924 of 24 June, 1983), identified discrimination as:

... practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics . . .

It is not a question whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

Discrimination on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex, age and criminal or summary conviction are all prohibited by the *Human Rights Act* (See Appendix F for a complete text of the *Human Rights Act*).

The Council is also responsible for approving special programs designed to remedy substantive inequalities in our society (section 19). Without the Council's approval, these programs would contravene the *Human Rights Act*.

(b) Jurisdiction of the Council

The Council's authority is restricted to matters within provincial jurisdiction. Federal matters are dealt with under the *Canadian Human Rights Act*.

The British Columbia *Human Rights Act* prohibits discrimination in the workplace, in public facilities, tenancy, purchase of property, employment advertising, wages, publications, and membership in trade unions and employer and occupational associations.

(c) Members of the British Columbia Council of Human Rights

Five Council Members are appointed by the Lieutenant Governor in Council. The five Council Members during this reporting period were: Lorna Barr, Helen Hughes, John Joe (Chairman), Eric Powell, and Douglas Wilson.

The following staff members of the Council were involved in the administration of human rights complaints through the Council in this reporting year.

Victoria Office:

Lois Akam	Manager
Alan Andison	Supervisor of Investigations
Peter Brown	Legal Officer
Marilyn Chapman	Receptionist (November–May)
Patt Cromer	Receptionist (to October, 1988)
Rita Fayle	Office Manager
Glenna Fink	Case Management Clerk
Nancetta Kobe	Case Management Clerk
Linda McCurdy	Secretary to Council
Patti Steele	Complaints Analyst
Mark Tatchell	Disclosure Officer
Sheila Twilley	Case Management Clerk

Vancouver Office:

Grace Ah Yung	Receptionist (June–November, 1988)
Nasim Babul	Receptionist (to June, 1988)
Muriel Hancock	Receptionist (November, 1988–on-going)
Gillian MacGregor	Complaints Analyst

II Complaint Procedure Under the Act

Introduction

The purpose of the *Human Rights Act* is to eradicate discrimination. The *Human Rights Act* is therefore remedial and not punitive in nature. The Council's procedures are designed to ensure that all complaints alleging discrimination are dealt with as expeditiously as possible following the principles of administrative fairness and natural justice. The following describes the Council's complaint procedures in some detail.

(a) Filing the Complaint

In most cases, a complaint is initiated through telephone contact to our Vancouver or Victoria offices (the latter has a toll-free number: 1-800-663-0876) or an Employment Standards Branch Office. Other Complainants come in person to file their complaints.

The individual, or someone on his/her behalf, then submits either a letter or a Complaint Information Form, available at any Council or Employment Standards Branch Office. The complaint must be received by the Council within six months of the alleged discriminatory act(s) unless the Council decides that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

After receiving the complaint, a Complaints Analyst will contact the Complainant and assemble more information on the matter. Intake documents are prepared using the information gathered.

(b) Review by Panel

Three of the five Council Members (the "panel") serve on a rotation basis to review the intake documents prepared by the Complaints Analyst. After this review, the panel decides whether or not the complaint should proceed to investigation. The panel may discontinue proceedings if the complaint:

- (i) is not within the Council's jurisdiction;
- (ii) is better dealt with under another Act;
- (iii) is trivial, frivolous, vexatious or made in bad faith; or
- (iv) was filed past the limitation period.

(c) Investigation

If the panel of three Council Members decides that an investigation is warranted, the case is assigned to an Industrial Relations Officer (IRO) in the region where the complaint originated. Facts surrounding the alleged incident(s) of discrimination are generally assembled through personal interviews in an impartial manner by the IRO assigned to the case. Potential sources of information to which the IRO may turn are the Complainant (the person making the complaint), the Respondent (the person or company the complaint is against) and

witnesses or other persons involved. The officer may also collect relevant records and documents.

The Supervisor of Investigations co-ordinates the investigations and ensures that all relevant information is gathered.

(d) Disclosure

Once the IRO's investigative report is received by the Council, a summary of the investigation is sent to the parties involved in the complaint. The Complainant(s) and the Respondent(s) then have 30 days to respond to the report and make any amendments. Any new relevant information will also be disclosed in order to give the parties an opportunity to respond to the new information.

(e) Decision After Investigation

After this disclosure, the same panel of three Council Members reviews the complaint. Under section 14 (1) of the *Human Rights Act* they can either:

- (i) discontinue the proceedings;
- (ii) recommend a settlement of the complaint, and where the recommendations are not accepted by either the Complainant or the Respondent, submit a report to the Minister;
- (iii) submit a report to the Minister; or
- (iv) designate one Member of the Council to hold a hearing.

The panel's decision is communicated to the parties in writing. If the panel decides to discontinue the proceedings, the Complainant receives written reasons for this decision.

(f) Hearing

The hearing is conducted by a designated Member of the Council (the "Member Designate") who was not on the panel which reviewed the case. This ensures that hearings are fair and impartial. The proceedings are open to the public. The Complainant and the Respondent are entitled to legal representation. If either party cannot afford a lawyer, they may apply for legal assistance through the Legal Services Society of British Columbia. During the hearing, evidence is presented, witnesses under oath are examined and cross-examined and other submissions are made. All of the evidence which would be admissible in a court of law is admissible in a Council hearing. The Member Designate, however, is not bound by strict rules of evidence, and has authority to receive all necessary information.

(g) Decision and Order

After the hearing, the Member Designate writes a decision which is sent to the parties. Ten days after the decision is sent to the parties, it is released to the press and public.

If the complaint is found to be substantiated, the Member Designate will make an Order pursuant to section 17 (2) of the *Human Rights Act*. The Member Designate:

- (i) shall order the person who contravened the Act to cease the contravention and to refrain from committing the same or a similar contravention;
- (ii) may make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the Member, s/he was denied contrary to the Act;
- (iii) may compensate the person discriminated against for all, or a part of, any wages or salary lost, or expenses incurred, by the contravention; and
- (iv) may order, in addition to, or instead of (ii) and (iii), that the person who contravened the Act pay to the person discriminated against an amount not exceeding \$2,000.

This order may be filed by the Complainant with the British Columbia County Court or Supreme Court, after which the Order has the same force and effect as an order of that court. Orders may then be enforced under the *Court Order Enforcement Act*.

(h) Judicial Review

Any party to the complaint may seek judicial review of the Council's decision by the British Columbia Supreme Court. Under the *Judicial Review Procedure Act*, an application for judicial review can be tendered if a party believes that the Council decision was made outside of its jurisdiction or if the decision reflects a legal error. As stated in *Century Oils (Canada) Inc. v. Davies* (1988), 9 C.H.R.R. D/4659, the court will not intervene with a decision of the Council unless it finds that the decision was "patently unreasonable."

(i) Statistics

In this reporting year, the Council reviewed 348 complaint intakes. Four cases were settled prior to investigation and 39 were dismissed after the initial panel review. Of those cases dismissed, 24 were found not to be within the jurisdiction of the Council, four were more appropriately dealt with under another Act, and 11 were filed past the limitation period.

During or following investigations, 114 cases were resolved. An additional 51 were found to be unwarranted after investigation and 91 were referred to hearings. At the end of this reporting period, 280 cases remained under investigation.

In this reporting period, the Council held 61 hearings. During this same period, 34 complaints which were scheduled to be heard were settled between the parties prior to a hearing and there were 12 where the Complainant did not pursue the matter. The Council issued 48 decisions, 33 in favour of the Complainant and 15 complaints were dismissed.

At the close of the period, 362 files remained open (this includes this year's files as well as files from previous years). For a complete statistical description of the Council's activities, see Appendix C.

III Special Programs: Section 19 (2)

Anyone may seek the approval of the Council for a program or activity whose goal is the improvement of the conditions of disadvantaged individuals or groups. The Council may, after a review of the objectives of the program, deem that it is not in contravention of the Act.

The Council granted exemptions to a variety of activities and programs during this reporting period.

Federal Job Strategy Program, Sony of Canada Ltd.: Sony applied for an exemption in order to conduct a survey under the Federal Contractors Employment Equity Program. The Council informed the company of a blanket exemption to all employers wishing to operate under the program. The exemption allowed Sony, and any other company acting under the program, to collect data on their employees. The survey is meant to determine the representation of minority and disadvantaged groups in the company, such as women, Natives, persons with disabilities and visible minorities, in order to institute employment programs suited to the needs of the persons in these groups.

Downtown Eastside (Vancouver) Women's Centre, hiring program: The Centre sought an exemption from the *Human Rights Act* in order to hire women only for two new positions. Approval was granted as the program was meant to ameliorate the conditions of a disadvantaged group, women. The responsibilities of the positions included handling the administrative operation of the Centre, acting as a facilitator and peer counsellor, organizing the drop-in centre and Centre programming, acting as a community liaison and a crisis intervention counsellor, referring women to other resources, fund raising, promoting health care, and introducing new women to the Centre.

First Citizens' Fund, Ministry of Provincial Secretary and Government Services, loans program: The First Citizens' Fund, having already obtained an exemption in 1985 for a scholarship program for Native students, sought another exemption for a loans program for Natives. The loans were established in order to promote the self-sufficiency of Native peoples by enhancing their economic development. The program would aid in the creation of successful new businesses and employment opportunities, the expansion of existing businesses, the enhancement of Native management skills and educational opportunities, and the support of Native Friendship Centres. The Council found that the program was designed to better the conditions of the Native community and is thus exempt from the Act.

Other programs approved by the Council were the Victoria Kwagiulth Urban Society hiring program, the Golden Bear Operating Company hiring program, the Ministry of the Environment Native training and hiring program, the Lower Mainland Society for the Physically Handicapped hiring program, and the Capital Regional Association for the Mentally Handicapped employment program.

IV Public Education Initiatives

The Council has initiated a variety of publicly oriented activities concerning human rights. Pamphlets and brochures have been published providing guidelines and general information about the procedures of the Council. In this reporting year, the Council answered over 7,000 human rights inquiries, and sent out over 30,000 copies of guides and brochures.

The following are a few examples of other activities engaged in by the Council.

(a) School Programs

(i) POSTER AND ESSAY CONTEST

This year the Council successfully organized its fourth annual poster and essay contest for elementary and secondary schools. The contest this year celebrated the Fortieth anniversary of the signing of the Universal Declaration of Human Rights. The activities in British Columbia were part of a national contest sponsored by the Canadian Rights and Liberties Federation with funding from the federal Secretary of State. The top three essay writers were awarded \$200 each. Essays were judged on originality, planning, coherent argument, comprehension of human rights, and competence in grammar and spelling. The goal of the contest was to have students think seriously about the Universal Declaration and why this document is important for both individuals and society. The students were asked to explore various aspects of this covenant. The winners of the essay contest were: Megan Frazer (Vancouver), Catherine Edgar (Prince George), and James Daniels (Vancouver).

Poster and mural projects were undertaken in elementary schools in British Columbia. Participation in the contest was enthusiastic. Classes submitted murals and individual students created posters. All participants showed a keen interest and insight into human rights. Students were given the opportunity, through the contest, to explore human rights as expressed in the Universal Declaration and to try to illustrate it in the poster or mural. The winning classes received \$200 each from the Council. The winners of the mural contest were: West Bench Elementary School, Grade 2/3 class (Penticton); Nicholson Elementary, Grade 4/5 Class (Golden); and Harold Bishop Elementary, Grade 5 Class (Surrey). The Poster Contest winners, who also received \$200 each, were: Elisa Hill (Duncan); Stephanie Liske (Langley); and Janelle Koolhaar (Langley).

The winning students were also awarded a trip to Ottawa to meet the Governor-General, Her Excellency Jeanne Sauve, and attend a presentation of the winning posters and essays from students in all provinces and territories.

(ii) CURRICULUM PROJECT

Work on a curriculum unit for Grade 11 social studies and Grade 12 law continued this year. The project is due to be published in the summer of 1989 and will provide a comprehensive guide to the teaching of human rights issues and law.

(b) Speaking Engagements

Staff and Council Members spoke at 110 different functions and gatherings around British Columbia this year. These speaking engagements included:

B.C. Coalition of Disabled, Conference on Transportation (Vancouver)
SUCCESS Chinese Women and Work (Victoria)
Williams Lake Women's Center Workshop on Racism
Valley Native Friendship Centre (Duncan)
Kwantlen College, Youth Job Entry Program (Surrey)
Trail and District Multicultural Society (Trail)
Canadian Haemophiliac Society (Vancouver)
Delta Secondary School (Delta)
Okanagan Tribal Council (Kelowna)
Disabled Persons Advocacy Project Workshop (Kamloops)
United Way (Victoria)
K-Mart Personnel Managers (Victoria)
Unitarian Church Family Support Program (Surrey)
Industrial Relations Management Association of British Columbia
(Vancouver)

(c) National and International Liaisons

The British Columbia Council of Human Rights is a member of and participant in a variety of national and international human rights organizations. Involvement this year included attendance at the Canadian Association of Statutory Human Rights Agencies (CASHRA) Conference in St. John's, Newfoundland. It was decided that Victoria, B.C. would be the host of the 1989 CASHRA conference. Council Member Douglas J. Wilson was elected President of CASHRA for a one-year term.

Canada celebrated, along with other members of the United Nations, the Fortieth Anniversary of the signing of the Universal Declaration of Human Rights. Commemorative signing ceremonies were participated in by all of the provinces, and the Council published a special report on the Declaration in December, 1988. A poster and essay contest was co-sponsored with the Canadian Rights and Liberties Federation (see p. 15).

Also in the field of international human rights, the Council participated in the celebration of the second decade of the Convention to Eliminate Racial Discrimination. To mark the beginning of the second decade, the Lieutenant-Governor, the Honourable David Lam, issued a proclamation declaring March 21, 1989 the "International Day for the Elimination of Racial Discrimination" (The complete text of the proclamation is included in Appendix G).

Continued involvement in the Federal/ Provincial/ Territorial Continuing Committee of Officials Responsible for Human Rights helped to monitor Canada's compliance with those international conventions of which Canada is a signatory (Council Member Douglas J. Wilson is British Columbia's official representative).

The Council has recently joined with several other organizations to form the Law Related Education Group. It is an affiliation of various organizations whose activities involve public legal education. Participants include representatives from the Women's Legal Education and Action Fund (LEAF), the People's Law School, the Legal Services Society, representatives of various university departments, the Law Foundation, secondary school teachers, and staff members of the Ministries of Education and Attorney General. The group meets two to three times annually, and its members sponsored an important conference entitled "Law versus Learning" for legal educators in Vancouver in June, 1988.

This broad spectrum of activities of both national and international interest expands the Council's knowledge in the field of human rights. Participation in these events and organizations illustrates the Council's desire to better promote public education of human rights.

V The Protection of the Rights of Persons with Disabilities

Persons with disabilities make up approximately 12.8% of the population over the age of 15. Discrimination presents a barrier to their full participation in society. It denies them basic human rights that are offered without question to the majority of the population. In this reporting period, 21.47% of the complaints filed with the Council were based on physical disabilities, and a further 3.14% on mental disabilities.

Persons with disabilities are often excluded from the daily activities available to the able-bodied. Institutionalization, ostracism, and architectural and attitudinal barriers have all prevented their full participation in society. Labels are often applied in order to distinguish them as being socially inferior, further justifying their isolation. They are identified by their particular disability, or by other terms considered to be derogatory, such as 'crippled'.

Individual worth is often measured on a scale developed by the able-bodied majority. Persons with a disability, thus, have few opportunities to establish their own merit on their own scale. The concept of "mainstreaming", or reintegrating persons with disabilities into society based on their own scale, has only recently become of importance and still escapes the majority's full acceptance (D. Lepofsky and J. Bichenbach, "Equality Rights for the Physically Handicapped").

Society must first remove the architectural and attitudinal barriers it has built in order to assist in this integration. Marcia H. Rioux describes the attitudinal barriers that limit persons with a disability from fully participating in society ("Last in the Queue" (1989), 10 C.H.R.R. C/89-1):

Until we begin to value the contributions and individual characteristics of people with handicaps and recognize that they are real members of our society, not just people who are superfluous, little is likely to change. We cannot put people in institutions or in segregated settings and expect them to be able to develop their strengths and personalities. It does not happen for people without handicaps and it will not happen for those with handicaps.

(p. C/89-3)

With these barriers in mind, human rights legislation has tried to remedy this form of discrimination. The *Human Rights Act* provides protection against discrimination on the basis of physical or mental disabilities in public facilities, purchase of property, tenancy, employment advertisements, employment and membership in unions and associations. The *Human Rights Act* also recognizes that persons with disabilities cannot do every job. Thus, where an employer can show that a refusal, limitation, specification or preference is based on a bona fide occupational requirement (bfor), that employer need not accommodate the individual's special needs.

The criteria for a bfor have been definitively set out in the Supreme Court of Canada decision in *Ontario Human Rights Commission v. The Borough of Etobicoke* (1982), 3 C.H.R.R. D/781. They are, briefly, that the requirement is imposed in good faith and meets an objective standard, that is, the requirement is imposed in the interests of and is reasonably necessary to the performance, economy and safety of the employer, the employee and his/her fellow employees, and the public.

Where there is not a bfor, the employer has a duty to accommodate the individual's special needs. This duty is based on the premise that society should take reasonable steps and make reasonable adjustments in order to facilitate equal opportunity and access for persons with a disability. This duty, however, falls short of imposing undue hardship on the employer. Furthermore, the Supreme Court of Canada has determined that no such duty to accommodate is imposed where it has been determined that there is a bfor (*Bhinder v. CN Rail* (1986), 7 C.H.R.R. D/3093).

The accommodation may involve some modification of the existing facilities or of the job itself. This may include re-assigning non-essential work duties, creating flexible work schedules, making physical alterations to facilities, training, and acquiring technical aids.

The Council published some guidelines in 1985 regarding the employer's rights and responsibilities with respect to persons with a disability. The employer should:

- (a) concentrate on a person's capabilities and not disabilities;
- (b) assess persons as individuals, not as members of a group;
- (c) not make generalizations about disabilities;
- (d) define specific employment needs according to business priorities;
- (e) clearly state the essential components of the job; and
- (f) establish reasonable standards for evaluating job performance.

All of these guidelines are meant to aid the employer to accommodate persons with a disability in the workplace.

The *Human Rights Act* provides protection from discrimination to persons with a disability in order to facilitate their efforts to become full participants in society.

Case examples:

Alexander v. Ministry of Labour and Consumer Services, Liquor Distribution Branch

Chairperson of the Hearing: Lorna Barr

Date of the Decision: January 26, 1989

Isabel Alexander was discriminated against under Section 3 of the Act on the basis of her physical disability when she was asked to leave a liquor store.

Alexander is partially blind and has a motor coordination impairment which affects her ability to walk and speak. The manager, thinking she was drunk, refused to serve her, then called the police when she would not leave. As Alexander was trying to explain her disability to the manager in the store, customers passed her making rude and insulting remarks. Alexander then called her lawyer who explained her disability to the manager. The manager apologized and cancelled the call to the police.

In awarding Alexander \$1,000 in damages, Lorna Barr found that it was the effect of the conduct which was discriminatory. Whether or not the manager knew of the disability or intended to discriminate was irrelevant to the finding that Alexander was treated differently because of her disability.

Letendre v. Royal Canadian Legion, South Burnaby Branch No. 83

Chairperson of the Hearing: John Joe

Date of the Decision: December 2, 1988

John Joe, Chairperson of the Hearing, found that Geraldine Letendre had been discriminated against due to her physical disability when she was denied the opportunity to dance at the Royal Canadian Legion because she was in a wheelchair.

Joe first found that the Respondent's canteen was a "service or facility customarily available to the public", thus subject to Section 3 of the Act.

The Complainant had been dancing in her wheelchair for over two years at the Legion. In February, 1983 she was told that, in order to avoid harming other patrons, she could no longer dance in her wheelchair. She was also told that the other patrons preferred not to have a person in a wheelchair on the dance floor.

Joe, in finding for the Complainant, reiterated the well-established principle that customer preference does not justify discrimination. A decision on compensation was postponed so as to provide the parties with an opportunity to reach a satisfactory settlement on the matter.

Croager v. Kelowna Community Development Society

Chairperson of the Hearing: Eric Powell

Date of Decision: November 28, 1988

Eric Powell, Chairperson of the Hearing, found that the Respondent discriminated against Gail Croager when it refused to re-hire her because of her physical disability (epilepsy).

Gail Croager had been working for six months as a relief Human Services Worker. On October 3, 1985, the Complainant began to experience "petit mal" seizures while at work. While visiting a co-worker later that evening, she had a "grand mal" seizure and was taken to the hospital where she stayed for one day. On October 5, she was ready to return to work, but was informed by the Administrator that they did not want her back to work pending legal and medical advice regarding the Respondent's liability toward the Complainant. The Complainant was informed that her file would be reviewed by the Board of the Society.

She heard a few weeks later that her services were no longer required as she was only hired for relief work and one of the full-time staff had returned to work. There was no mention of her physical disability at the time she was laid off, nor was it stated at the hearing as a reason for the decision to terminate her employment.

In deciding that the Complainant had been discriminated against, Powell considered the Complainant's medical history and the fact that she subsequently found employment in a similar position elsewhere.

Powell ordered the Respondent to cease the discriminatory conduct and to pay the Complainant \$1,231.20 in wages lost and an additional \$1,000 as some compensation for the injury to feelings and loss of self-respect.

APPENDICIES



Appendix A — Settlements

At any time during the complaint procedure, a Complainant and a Respondent may choose to settle the complaint without going to a hearing. During this reporting period, 169 cases were discontinued following investigation, of which 114 were settled between the parties. A further 34 cases were resolved at or prior to a hearing. Some examples of settlement agreements are briefly examined below.

A black woman alleged that a restaurant owner had refused to employ her because of her race, colour and/or ancestry. The woman withdrew her complaint upon receipt of an award representing general damages.

A woman alleged that she was denied access to services on the basis of her religion. She withdrew her complaint once she was offered the services and guaranteed access to them in the future.

A man, who was diagnosed as being HIV positive and having ARC (an Acquired Immune Deficiency Syndrome (AIDS) related complex), filed an allegation of discrimination on the basis of physical disability when two dentists refused his request for urgent dental work. The Complainant settled upon payment of \$215 (the cost of the dental work) from each Respondent.

A woman alleged that she was refused employment as a welder because of her sex. She withdrew her complaint upon payment of \$7,500, representing general damages and lost wages.

A woman, who was employed selling automotive parts, alleged that she was being discriminated against on the basis of sex when she learned that her male co-workers may have been earning \$250 more bi-weekly than she was. The woman withdrew her complaint upon receipt of \$1,820, an amount equivalent to the difference between her wages and her male co-workers wages for one year.

A man, who is a manic depressive and whose condition is controlled through medication, alleged that his employment was terminated due to his mental disability. The Complainant withdrew his complaint upon receipt of \$600 representing lost wages.

A woman, who was hired as a tree planter and first aid attendant by a tree planting company, alleged that she was sexually harassed by her employer. The woman subsequently withdrew her complaint upon receipt of \$2,000 from her former employer as some compensation for the wages lost as a result of the harassment.

Two women filed separate complaints against an educational institution for sexual harassment. Both Complainants agreed to be transferred to another school, which cost them money, lost class time and transportation expenses. The Respondent paid the first Complainant \$1,200 and the second Complainant \$785 to compensate them for the costs they incurred as a result of the transfer.

A homosexual man alleged that he was fired because he was perceived as having AIDS. The Complainant withdrew the complaint upon receipt of \$1,500 representing compensation for lost wages.

A woman alleged that she had been discriminated against on the basis of marital status when she was refused a position. The woman accepted \$5,000 as a settlement.

Appendix B — Significant Decisions

(a) Council Decisions

RACE, COLOUR, ANCESTRY AND PLACE OF ORIGIN

Patel v. Edelweiss Delicatessen

Chairperson of the Hearing: Eric Powell

Date of Decision: November 28, 1988

Section of the Act: employment (section 8)

The Complainant, a young Indo-Canadian woman, was employed as a counter clerk at Edelweiss Delicatessen in Vancouver. On one occasion a customer presented her with a coupon with which she was unfamiliar, resulting in her having to ask another employee what to do. The Complainant testified that she felt the customer had left satisfied.

The next day she was told that her work would be restricted to cleaning tables. Her co-worker asked the manager why the Complainant was limited to this work. The manager replied that he had another Indo-Canadian working for him at another restaurant, and she was always "dirty". He felt that his delicatessen was a "caucasian store, and served caucasian people." He, therefore, did not feel that it was appropriate for the Complainant to be serving customers.

Eric Powell found that the Respondent discriminated against the Complainant with respect to her race, colour and ancestry when he limited her work to cleaning tables. The Complainant was awarded \$1,000 as some compensation for the humiliation she suffered as a result of the discrimination.

Fraser v. City of Victoria Police Department and the Corporation of the City of Victoria and Paul's Restaurant Ltd.

Chairperson of the Hearing: Eric Powell

Date of Decision: June 7, 1988

Section of the Act: services, facilities and accommodation customarily available to the public (section 3)

Eric Powell, Chairperson of the Hearing, found that the Respondents discriminated against the Complainant, a black man, with respect to his race, colour and place of origin, when he was refused service at a restaurant and subsequently arrested and detained overnight at the police station.

The Complainant entered Paul's Restaurant at approximately 2 o'clock in the morning. Seeing a sign which read "Please be seated", he proceeded to the only empty seat. A waitress took his order, but he was never served. Eventually, the restaurant filled and the waitress asked the Complainant to move to another seat. Seeing no other space available, the Complainant refused to move until after he had been served.

The restaurant then called the police to have him removed. When the police officers arrived they threatened him with arrest and detention if he did not leave

the restaurant. One of the officers allegedly told him that if he were an American, he should know that he could be deported if charges against him were laid. The officers also said that if he were arrested, he would be detained until Monday because there was no one available to take bail until that time.

The officers instructed the waitress to put her hand on the Complainant's shoulder and ask him to leave so that the officers could arrest him. The Complainant stood up and the officers arrested him. He stayed in jail until 10:40 the next morning, at which time the charges were dropped.

Witnesses testified that the Complainant was polite, sober and said nothing derogatory to the waitress or anyone else. The waitress claimed that the Complainant had called her a "bitch" and "white trash". Eric Powell found that these comments were a reflection of the waitress' own biases, and no such remarks were ever made by the Complainant.

Powell also found that the statements made by the police insinuating that the Complainant was an American were motivated by the Complainant's race and were an indication of racism and bias on the part of the police officers.

Powell ordered that the Respondents cease and desist such discriminatory behaviour, and that they each pay to the Complainant \$2,000 as some compensation for the humiliation suffered as a result of the discrimination.

RELIGION

Van Gaalen v. Fabricland Distributors Ltd. dba "Textile Clearing House"

Chairperson of the Hearing: Helen Hughes

Date of Decision: November 10, 1988

Section of the Act: employment (section 8)

The Complainant, Marringje Van Gaalen, is a member of the Free Reform Church, a fundamentalist Christian Church. She alleged that her employer terminated her part-time sales clerk position when she refused to work at a "Sunday Madness Sale."

The Complainant's religious beliefs were such that she could not work Sundays. She had been employed by the Respondent for four years, and had always informed new managers of her beliefs. She had never worked Sundays in the past. In March, 1987 she found that she had been scheduled to work both a Saturday and a Sunday shift. As the Manager was unavailable, the Complainant called the Assistant Manager to inform her that she could not work that Sunday and explained why. She also stapled a note to the schedule to that effect.

At the close of her Saturday shift, the Complainant was called into the Manager's office. The Manager informed her that she either had to work that Sunday, or else she would be put on two weeks' notice of termination. Van Gaalen said that she would not compromise her religious beliefs, and did not show up for work the next day.

Her employment was terminated, and her Record of Employment read "Fired/Dismissed due to not working Sundays". The Manager testified that she knew nothing about the reason that van Gaalen refused to work Sundays and the information was not noted in her employee's file.

Helen Hughes, Chairperson of the Hearing, found that the Respondent had discriminated against van Gaalen in terminating her employment. She expressed some concern that important information such as a need to accommodate an individual's religious convictions was not recorded in a general policy statement. Hughes ordered the Respondents to cease and desist such discrimination in the future and to pay to the Complainant \$1,000 as compensation for the hurt and injury to the Complainant's feelings of self-respect.

PHYSICAL AND MENTAL DISABILITY

Biggs & Cole v. Hudson, registered owner of "Grande Manor"

Chairperson of the Hearing: Helen Hughes

Date of Decision: October 6, 1988

Section of the Act: tenancy (section 5)

The Complainants filed a complaint against the Respondent for discrimination in tenancy on the basis of a physical disability, Acquired Immune Deficiency Syndrome (AIDS). This was the first human rights tribunal on this issue in Canada.

One of the Complainants, Biggs, had tested positive for AIDS. In order to help him with the emotional strain resulting from learning about his illness, Biggs acquired a dog. Although the building in which he lived did not allow dogs, and a sign was posted to that effect, other tenants had dogs. The dog that the Complainant acquired was also ill. A Vancouver newspaper learned of this and wrote a human interest story about the sick man and his sick dog. The owner of the building then discovered the dog and the Complainants were evicted along with the other tenants who had dogs.

Helen Hughes, Chairperson of the Hearing, found that, although the complaint itself was unjustified, AIDS constitutes a physical disability within the meaning of the Act. Furthermore, not only can persons with AIDS file complaints on the basis of physical disability, but persons who are discriminated against because they are perceived to have AIDS can also file a complaint on this ground.

Speaking to the issue of employment discrimination, Hughes held that, in order to accommodate the victim of AIDS and reinstate him/her to his/her former status, the employer must take into account the requirements of the position including risk of transmission, precautions taken to prevent transmission, and safety factors. Reinstatement of the individual will depend upon reasonable medical judgment given the state of medical knowledge at that time.

SEX

Hillicke v. Creative Financial Services Corporation doing business as "Leo's Restaurant"

Chairperson of the Hearing: John Joe

Date of Decision: February 16, 1989

Section of the Act: employment (section 8)

John Joe, Chairperson of the Hearing, found that the Respondent discriminated against the Complainant with respect to her employment on the basis of sex.

The Complainant was employed as a night shift bartender at the Respondent's restaurant. As a night shift bartender, she was responsible for closing up the restaurant.

The employer eventually gave her closing duties to a man to perform. Her hours were subsequently reduced from seven to four hours per shift. She was then transferred to the day shift, which consisted for the most part of cleaning duties.

The Manager indicated to her that women were better at cleaning and could not take on the responsibilities included in the night shift duties.

Joe found that the Complainant was treated differently from the other male employees and was therefore discriminated against on the basis of her sex. Joe ordered that the Respondents pay the Complainant \$1,500 as compensation for the humiliation suffered as a result of the discrimination.

Forsyth v. Corporation of the District of Matsqui, Matsqui Police Service

Chairperson of the Hearing: Lorna Barr

Date of Decision: December 14, 1988

Section of the Act: employment (section 8)

The Complainant is a qualified municipal police officer. She applied on four different occasions to the Respondent police force for a position as a police constable. She was refused each time, and on each occasion a man was hired.

The criteria for the position were police experience, education and training. The Complainant's qualifications fully satisfied these requirements.

Lorna Barr, Chairperson of the Hearing, found that the Complainant was not given equal consideration with the other male applicants, and that the assessment of her application was inconsistent with the others. Barr ordered that the Respondent compensate the Complainant for the discrimination by awarding her \$2,000.

SEX (SEXUAL HARASSMENT)

William Cassidy v. Antonio Murgio Sanchez, doing business as "Tony's Place"

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: August 2, 1988

Section of the Act: employment (section 8)

Douglas J. Wilson, Chairperson of the Hearing, found that the Respondent sexually harassed William Cassidy while Cassidy was employed at "Tony's Place", and fired the Complainant when he did not respond to his sexual advances.

The Complainant worked as a short order cook for the Respondent from July 1 to August 21, 1986. During the time that he was employed, Sanchez on several occasions touched the Complainant's shoulders, back and buttocks, and on one occasion grabbed his leg just below the groin. Sanchez once asked the Complainant to accompany him to his home to share alcohol and drugs. Once when the Complainant asked that Sanchez pay his wages, Sanchez put his arm around the Complainant and said that he "could be paid anytime he wanted." The Complainant testified that he rebuffed all of Sanchez' sexual advances.

Sanchez' partner returned from holidays in mid-August 1986 and the Complainant testified that his employment relationship with Sanchez worsened after this. The Complainant believed that he had been fired because he rebuffed Sanchez' advances and because Sanchez' partner was jealous of Sanchez' interest in the Complainant.

Wilson ordered the Respondent to pay the Complainant \$2,000 as some compensation for the humiliation, loss of dignity and loss of self-esteem he suffered as a result of the contravention.

Kerri Elmore v. Today's Market Line (1987) Inc.

Chairperson of the Hearing: Helen Hughes

Date of Decision: January 9, 1989

Section of the Act: employment (section 8)

Helen Hughes, Chairperson of the Hearing found that Gordon Sharpe, President of Today's Market Line (1987) Inc., sexually harassed Kerri Elmore when he hypnotised her during employment training sessions.

Elmore had approached Sharpe about a sales representative position. She had a meeting with Sharpe and a female sales representative, Elizabeth Jose, about the training sessions. Both told Elmore about the benefits of hypnosis training. Elmore agreed and was hypnotised with the other sales representative present.

Training sessions continued, and Elmore was hypnotised three more times by Sharpe. A few weeks after the first session, Elmore informed Sharpe that she was no longer comfortable with the hypnosis training. A short time later, while working on a computer sales programme, Sharpe put Elmore in a hypnotic trance.

Sharpe moved Elmore to his bedroom and placed her on his bed. He deepened her trance and moved his hand from her navel over her breast, to her shoulder and down her arm. He moved his hand from her navel, over her pelvic area and down her leg. He repeated these movements about 10 times. Sharpe told her that he wanted her to trust him, to look forward to these sessions and to learn to love him on a personal and professional basis. Sharpe then pulled up Elmore's shirt and told her she had beautiful breasts, kissed her on the navel and told her that she would feel it in her breasts. He pulled her shirt down again, kissed her on the lips, and told her that he could make love to her if he wanted to, but he was not going to do so.

As soon as Elmore came out of the trance, she left Sharpe's residence, went home and wrote in her diary that she was going to quit her employment. Sharpe called her later, but Elmore asked to speak to Jose. She told her that she "remembered things she wasn't supposed to" during her session and that she was quitting. Sharpe told her to reconsider her position, and sent her a letter the next day telling her that her allegations were hallucinations.

Sheldon Bilsker, President of the Canadian Hypnosis Association, testified that the chance of a hallucination occurring during hypnosis is very rare. He stated that after an interview with Elmore, he believed her to be telling the truth. Neither Jose nor Sharpe attended the hearing.

Hughes found that Elmore was a person in the process of becoming an employee of Today's Market Line, and that Sharpe's devastating and repulsive conduct constituted sexual harassment. Hughes ordered the Respondent to pay \$2,000 to the Complainant as some compensation for the embarrassment, loss of self-esteem and injury to her emotional and mental health.

Sandy Johnson and Sandy Sapers v. Dell Canada Marketing Corporation

Chairperson of the Hearing: Lorna Barr

Date of Decision: September 14, 1988

Section of the Act: employment (section 8)

Lorna Barr, Chairperson of the Hearing, found that James F. Armstrong, President of Dell Canada Marketing Corporation, sexually harassed two of his former employees, Sandy Sapers and Sandy Johnson, and fired them when they rebuffed his advances.

Both of the Complainants worked for the Respondent's Vancouver company at different times, and did not know each other prior to filing their complaints. Their testimonies describing Armstrong's conduct were similar. Both of the Complainants stated that they believed they were hired for an administrative position, but once hired they found they were often asked to serve Armstrong drinks and to accompany him on social occasions. They testified that Armstrong had made inappropriate comments regarding their appearances, asked if they would wear certain apparel, and stared at them.

Johnson testified that Armstrong had asked her to sleep with him on a trip to Victoria, and shortly after she told him that she was not interested, he fired her. Sapers testified that Armstrong tried to kiss her on the mouth one evening after

dinner and stated that she was fired a few days after she refused an invitation to stay after work and socialize with him.

Both Armstrong and Sapers testified that their experience with Armstrong left them feeling shattered and they lost their self-confidence. Sapers stated, "I couldn't believe . . . that I was not being considered because of my intelligence and capabilities in the office place . . . it all mattered on what I looked like." Both Complainants subsequently sought psychiatric counselling.

Armstrong did not dispute most of the Complainants' testimony, but rejected the notion that they were fired as a result of their refusal to accept his advances.

Barr found that both Johnson and Sapers had been hired by Armstrong, not because of their skills and abilities, but because they are women. Barr ordered Armstrong to pay to Johnson \$1,600 for salary loss and \$1,500 for humiliation, and to pay to Sapers \$8,000 in salary loss and \$1,500 for the embarrassment and loss of self-esteem suffered as a result of the discrimination.

CRIMINAL CONVICTION

John Dore v. Crown Tire Service Ltd., doing business as "Hercules Tire Store"

Chairperson of the Hearing: Helen Hughes

Date of Decision: October 25, 1988

Section of the Act: employment (section 8)

The Complainant was hired on a part-time trial basis by the Respondent on February 14, 1987, and was terminated on March 9, 1987, following a charge of "break and enter" being laid against him. Based on the evidence presented, Helen Hughes, the Chairperson of the Hearing, found that a significant factor in terminating the Complainant's employment was the criminal conviction charge.

Hughes had to first determine whether or not the protection in section 8 extends to persons charged with a criminal or summary conviction charge which is unrelated to the employment or intended employment of that person.

Hughes relied on the fundamental principle of law that a person is presumed innocent until proven guilty in a court of law. This presumption must apply in the matter of a criminal conviction charge. It has been well established that human rights legislation should be given as fair, large and liberal interpretation as possible in order to achieve its objects. With these principles in mind, Hughes found that it is entirely in keeping with the objects and principles of the Act to protect persons charged with criminal offences. Indeed, to not do so would undermine the nature of the Act.

The Complainant was hired by Rodney Carlson to train in the auto repair shop. The Complainant did not have reason to believe that Carlson was displeased with his work and felt that he would have been kept on after the training period was completed.

On Saturday March 7, 1987, the Complainant was being questioned by the police regarding an incident at an elementary school. The Complainant's father advised the Respondent that the Complainant would be unable to attend work that day. The Complainant was charged with break and enter and released the same day.

On March 9, the Complainant telephoned Carlson to inquire about the hours of work that week. Carlson asked the Complainant to come to the Respondent's shop to discuss "the trouble." When he arrived, Carlson asked him what had happened and the Complainant told him that he had been charged. Carlson then told him that he would have to let him go and indicated that he "couldn't have a guy like you around. Wouldn't be good for business. Customers wouldn't like that." Carlson conceded in his testimony that the charges against the Complainant had a "little bit of bearing" on his decision to terminate the Complainant's employment.

Hughes found that the Respondent did not establish that the criminal conviction charge was related to the Complainant's employment. She also noted the established principle in human rights law that customer preference is not a valid excuse for discrimination. Hughes found that the Respondent discriminated against the Complainant when his employment was terminated because of a criminal conviction charge unrelated to his employment. The Respondents were ordered to cease and desist such discrimination and to pay to the Complainant the sum of \$500 for the humiliation and loss of dignity caused by the contravention.

Salter v. Board of School Trustees District Number 59 (Peace River South)

Chairperson of the Hearing: Lorna Barr

Date of Decision: March 15, 1989

Section of the Act: employment (section 8)

Chairperson of the Hearing, Lorna Barr, found that the Respondent was justified in refusing to employ the Complainant, Barry Salter, when a criminal record check revealed that he had been charged with possession and trafficking in marijuana.

Salter had applied for a temporary summer position with the Respondent school district as a qualified journeyman carpenter. Following the interview he was advised that he would be hired subject to a successful criminal record check by the R.C.M.P. The check revealed that the Complainant had been charged for trafficking in and possession of marijuana. As a result the Manager of Operations and Facilities advised Salter that he was ineligible for employment at that time, but could be considered the next year if he were cleared of the charges.

Barr noted in her decision that there may be situations, such as this case, where the circumstances of the charge itself are sufficiently related to the employment relationship that the Respondent need not demonstrate the existence of a bona fide occupational requirement. After considering the arguments in this case, Barr found that Salter's conduct would be detrimental and prejudicial to the interests of the school board, and therefore dismissed the complaint.

(b) Court Decisions

Under the *Judicial Review Procedure Act* any party may apply for judicial review of a Council decision. The following are some examples of significant court decisions that were handed down in this reporting year.

The University of British Columbia School of Family and Nutritional Sciences v. Janice Berg and the British Columbia Council of Human Rights*

Presiding Judge: Lander, S.C.J. (British Columbia Supreme Court)

Date of Decision: September 27, 1988

The University of British Columbia (UBC) sought to set aside a decision of Council Member Douglas J. Wilson who found that UBC discriminated against Janice Berg on the basis of mental disability when they denied her certain services available to other graduate students.

The Court set aside the Council's decision in favour of the Complainant and held that the Council did not have jurisdiction to hear the matter.

The Court considered two questions in this application:

- (i) whether the Council determined that it had jurisdiction to hear this application; and
- (ii) whether the Council erred in its interpretation of Section 3 of the *Human Rights Act*.

In answer to the first question, the Court held that the Council proceeded upon the assumption that it had jurisdiction in this matter. The Member Designate failed to consider whether or not the complaint fell within the purview of section 3.

The Court then proceeded to the second question to determine whether or not section 3 was applicable to the facts of the case.

Lander, S.C.J. considered the case law concerning the interpretation of human rights legislation. He found that it must be interpreted liberally and the decisions of the Council should not be overturned unless its decision is "so patently unreasonable that the tribunal will have lost jurisdiction."

The Court held that the services denied the Complainant, namely a "rating sheet" and a key to the department's building, could not be "services customarily available to the public" even within the broadest interpretation of section 3. The Council, therefore, did not have jurisdiction to hear the complaint, and its decision was quashed.

* The Council has given Notice of Appeal to the British Columbia Court of Appeal.

Cook v. British Columbia Council of Human Rights and Eaton's

Presiding Judge: Wood, S.C.J. (British Columbia Supreme Court)

Date of Decision: April 28, 1988

The British Columbia Supreme Court set aside the Council's decision not to proceed to a hearing with the complaint of Elaine Cook.

Cook had filed a complaint with the Council that Eaton's discriminated against her on the basis of sex when a position for which she had applied was filled by a younger man with less sales experience. Eaton's claimed that the man was hired due to his better work performance and Cook's less impressive sales record and performance. The Council, after reviewing the case, found that there was

insufficient evidence that Cook had been treated differently because of her sex. The proceedings were therefore discontinued.

The Court held that the standard which the Council should apply when deciding whether or not to designate a hearing for a particular case is a test of reasonableness. The Council must, then, decide whether a Member Designate at a hearing, acting reasonably, could find the complaint to be proved on a balance of probabilities. The Council cannot weigh the evidence presented to it in order to determine whether or not it should go to a hearing. The Court found that the Council had weighed the evidence in the case. The case was therefore remitted back to Council.

(c) Decisions with a National Impact

Cashin v. Canadian Broadcasting Corporation

Federal Court of Appeal

Reasons by: MacGuigan J.

Rosann Cashin appealed the decision of a Canadian Human Rights Commission Review Tribunal. The Review Tribunal reversed the decision of the initial Tribunal which had found that Rosann Cashin was discriminated against because of her marital status when her employment as a CBC writer and radio broadcaster was terminated. The Federal Court of Appeal held that Rosann Cashin was discriminated against because of her marital status.

Rosann Cashin's employment was terminated in September, 1981, because her husband, Richard Cashin had been appointed to the Board of Directors of Petro Canada. The CBC believed that Cashin would no longer be perceived to be an objective reporter of resource issues. This perception stemmed from the fact that the Complainant has the same last name as her husband. The CBC, then, treated her differently than they would have had she been associated with Richard Cashin in a relationship other than as a spouse, or if they were divorced.

The Court of Appeal held that perceived objectivity is not a bona fide occupational requirement for journalists. No objective standard exists to measure whether the public perceives a journalist to be objective or not. The employer can only guess how the public will react, which does not meet the standards of proof for a bona fide occupational requirement as set out in *Ontario Human Rights Commission v. The Borough of Etobicoke*.

The Court of Appeal reinstated the remedies granted the Complainant by the original Tribunal. The Respondent was ordered to reinstate the Complainant to her former or a similar position as soon as possible, to pay her a sum equal to lost wages to be determined by the parties, and to pay her \$2,500 as compensation for hurt feelings and loss of self-respect suffered as a result of the discriminatory practice.

NOTE: On December 15, 1988, the Supreme Court of Canada refused to grant the Canadian Broadcasting Corporation leave to appeal this decision.

Appendix C — Statistics

April 1, 1988 – March 31, 1989

The following tables detail the nature of complaints received, the level of intake activity, the disposition of complaints prior to investigations under Section 13 of the *Human Rights Act* and dispositions of complaints following investigations.

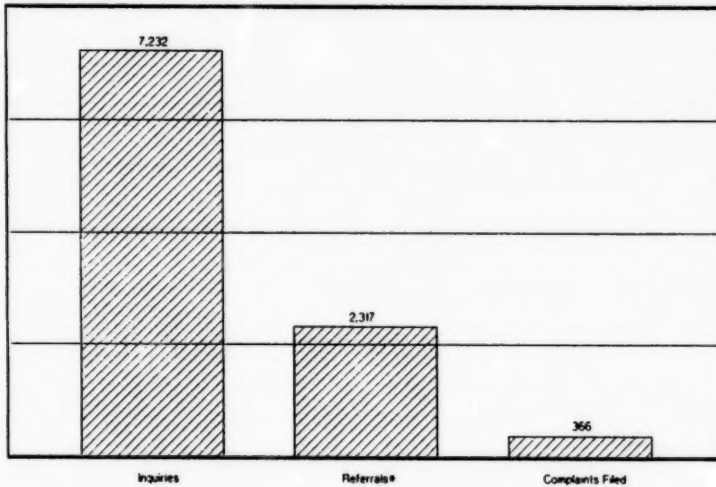
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- Table 1 Intake Activities — April 1, 1988 to March 31, 1989
- Table 2 Disposition under Section 13 (1) — April 1, 1988 to March 31, 1989
- Table 3 Status of Complaints — at March 31, 1989
- Table 4 Disposition of Complaints Designated to Hearings — April 1, 1987/
March 31, 1988 — April 1, 1988/March 31, 1989
- Table 5 Complaints by Prohibited Grounds — April 1, 1988 to March 31,
1989
- Table 6 Complaints by Section of the Act — April 1, 1988 to March 31, 1989

Table 1

INTAKE ACTIVITIES

April 1, 1988 to March 31, 1989

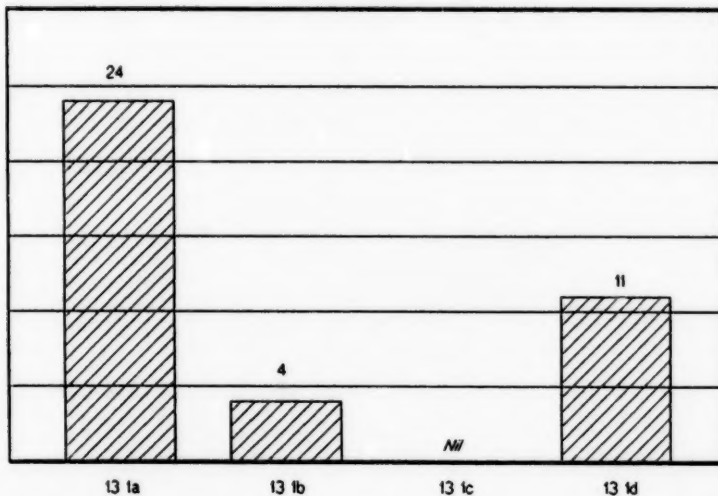


*Referrals are persons seeking assistance who are referred to another agency which can best assist them

Table 2

DISPOSITION UNDER SECTION 13(1)

April 1, 1988 to March 31, 1989



LEGEND:

TOTAL 39

13 1a Not within the jurisdiction of the Council

13 1b More appropriately dealt with under another Act

13 1c Is trivial, frivolous, vexatious or made in bad faith

13 1d Based on facts that occurred more than six months before complaint was filed

STATUS OF COMPLAINTS

A bar chart with four bars representing different case statuses. The y-axis has horizontal grid lines but no numerical labels. The values are labeled above each bar: 280 for 'Under Investigation', 114 for 'Resolved', 51 for 'Unsubstantiated', and 91 for 'Designated to Hearings'. The bars are filled with diagonal hatching.

Status	Count
Under Investigation	280
Resolved	114
Unsubstantiated	51
Designated to Hearings	91

TOTAL 536 2

- DISPOSITION OF COMPLAINTS REFERRED TO HEARING

A bar chart comparing the outcomes of two groups of cases. The x-axis lists four outcomes: Settled, Order, Dismissed, and Not Pursued. The y-axis represents the number of cases, with horizontal grid lines at intervals of 10. The first group (left) has 28 Settled, 27 Order, 6 Dismissed, and 11 Not Pursued cases. The second group (right) has 34 Settled, 33 Order, 15 Dismissed, and 12 Not Pursued cases. All bars are filled with diagonal hatching.

Outcome	Group 1 (Left)	Group 2 (Right)
Settled	28	34
Order	27	33
Dismissed	6	15
Not Pursued	11	12

Table 5

COMPLAINTS BY PROHIBITED GROUNDS

April 1, 1988 to March 31, 1989

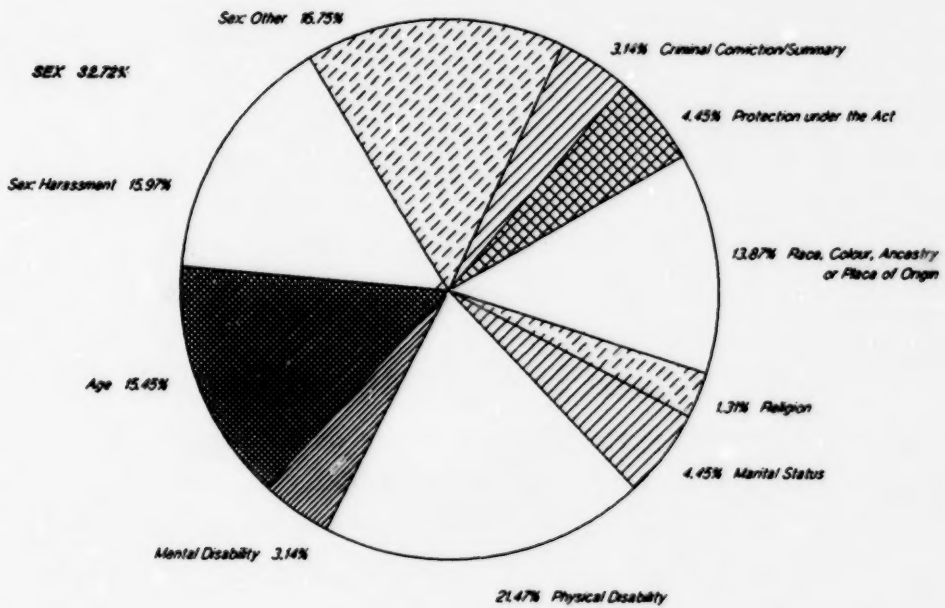
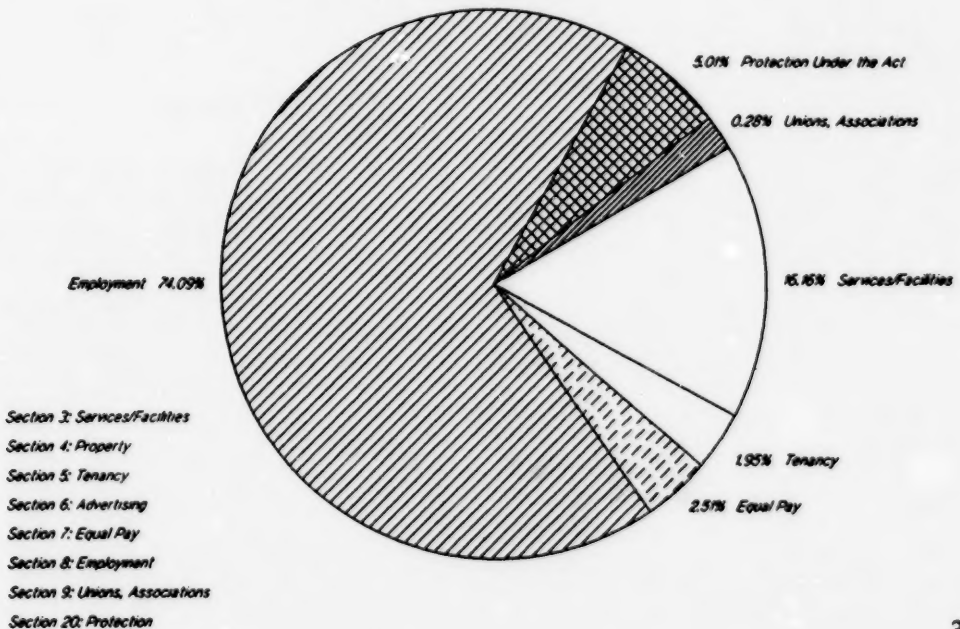


Table 6

COMPLAINTS BY SECTION OF THE ACT

April 1, 1988 to March 31, 1989



Appendix D — Financial Report

The Council was allocated \$1,141,223 as its budget for the fiscal year 1988-89.

MAJOR EXPENDITURES:

Salaries	\$616,145
Rent.....	\$66,000
Professional Services	\$86,525
Travel.....	\$70,000
Office and Business Expenses	\$29,500

Appendix E — B.C. Council of Human Rights Offices

VICTORIA

British Columbia Council
of Human Rights
2nd Floor, 844 Courtney
Victoria, B.C.
V8W 1C4

387-3710

TOLL FREE NUMBER 1-800-663-0876

VANCOUVER

British Columbia Council
of Human Rights
406, 815 Hornby St.
Vancouver, B.C.
V6Z 2E6

660-6811

Employment Standards Offices

Deer Lake Centre
4946 Canada Way
Burnaby, B.C.
V5G 4J6

299-7211

45904 Victoria Ave.
Chilliwack, B.C.
V2P 2T1

795-8400

117 — 10th Ave. South
Cranbrook, B.C.
V1C 2N1

426-1291

Room 206, Court House
420 Cumberland Road
Courtenay, B.C.
V9N 2C4

334-1225

1201 — 103rd Ave.
Dawson Creek, B.C.
V1G 4J2

784-2390

220, 546 St. Paul St.
Kamloops, B.C.
V2C 5T1

828-4516

3rd Floor, 1019 Wharf St.
Victoria, B.C.
V8W 2Z3

387-1220

301, 1664 Richter St.
Kelowna, B.C.
V1Y 8N3

861-7404

13 Victoria Crescent
Nanaimo, B.C.
V9R 5B9

755-2342

310 Ward St.
Nelson, B.C.
V1L 5S4

354-6550

3547 Skaha Lake Rd.
Penticton, B.C.
V2A 7K2

492-1333

1044 — 5th Ave.
Prince George, B.C.
V2L 3H9

565-6120

108 — 320 Eby Street
Terrace, B.C.
V8G 5K8

638-3272

540 Borland St.
Williams Lake, B.C.
V2G 1R8

398-4478

Appendix F — The B.C. *Human Rights Act*

HUMAN RIGHTS ACT**CHAPTER 22***[Act administered by the Ministry of Labour]**Assented to May 16, 1984.***Contents**

Section

Section

1. Interpretation**PART 1****DISCRIMINATORY PRACTICES PROHIBITED**

- | | |
|---|--|
| 2. Discriminatory publication | 6. Discrimination in employment advertisements |
| 3. Discrimination in public facilities | 7. Discrimination in wages |
| 4. Discrimination in purchase of property | 8. Discrimination in employment |
| 5. Discrimination in tenancy premises | 9. Discrimination by unions and associations |

PART 2**COUNCIL OF HUMAN RIGHTS**

- | | |
|---------------------------|--|
| 10. Council established | 13. Decision not to proceed with investigation |
| 11. Complaints | 14. Procedure after investigation |
| 12. Inspection of records | 15. Decision to be communicated in writing |

PART 3**BOARD OF INQUIRY**

- | | |
|----------------------|-------------------------------|
| 16. Board of inquiry | 17. Disposition of complaints |
|----------------------|-------------------------------|

PART 4**GENERAL**

- | | |
|------------------------------------|------------------|
| 18. Disclosure | 23. Offence Act |
| 19. Exemptions | 24. Regulations |
| 20. Protection | 25-26. [Spent] |
| 21. Style of cause for proceedings | 27. Transitional |
| 22. Technical and other matters | 28. Commencement |

Interpretation**1. In this Act**

- "age" means an age of 45 years or more and less than 65 years;*
 "council" means the British Columbia Council of Human Rights;
 "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
 "employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;
 "employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;
 "occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

6/9/85

* In January 1988, the British Columbia Court of Appeal in *Connell and Harrison v. U.B.C.* found that the definition of age in the *Human Rights Act* is of "no force and effect." The matter was argued before the Supreme Court of Canada in February 1989. The court has reserved its judgment.

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act*, a person may, by speech or in writing, freely express his opinions on a subject.

1984-22-2.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

1984-22-3.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

1984-22-4.

Discrimination in tenancy premises**5. (1) No person shall**

- (a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or
- (b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

1984-22-5.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

- (a) no action shall be commenced later than 12 months from the termination of his services, and
- (b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall
- (a) refuse to employ or refuse to continue to employ a person, or
 - (b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

- (a) as it relates to age, to any bona fide scheme based on seniority, or
- (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall
- (a) exclude any person from membership,
 - (b) expel or suspend any member, or
 - (c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

1984-22-9.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of not more than 5 members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10.

24/9/84

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the council shall investigate a complaint.

1984-22-11.

Inspection of records

12. For the purposes of conducting an investigation, the council may make an examination and inquiry that it considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information the council requires respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

1984-22-12.

Decision not to proceed with investigation

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

Procedure after investigation

14. (1) On completion of an investigation, the council shall

(a) order that the proceedings be discontinued,

(b) recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened this Act, submit a report to the minister,

- (c) submit a report to the minister, or
 - (d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council
 - (i) where he considers the complaint is not justified, shall dismiss the complaint, or
 - (ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).
- (2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.
- (2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,
- (a) the privileges and protection of section 12 of the *Inquiry Act*, and
 - (b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*
- given to a commissioner appointed under Part 2 of that Act.
- (3) On receipt of a report under subsection (1) (b) or (c), the minister shall
- (a) refer the complaint to a board of inquiry, or
 - (b) order that the proceedings be discontinued.
- 1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85).

Decision to be communicated in writing

15. An order under section 14 (1) (a) or (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15.

PART 3

BOARD OF INQUIRY

Board of inquiry

- 16.** (1) A board of inquiry shall consist of one person appointed by the minister.
- (2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.
- (3) The persons who are entitled to be parties to proceedings before a board of inquiry are
- (a) the complainant,
 - (b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,
 - (c) the person who is alleged to have contravened this Act, and
 - (d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

6/9/85

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and

(b) may order the person who contravened this Act to

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this Act to pay to the person discriminated against an amount not exceeding \$2 000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or

(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

6/9/85

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

Protection

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20.

Style of cause for proceedings

21. (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

Regulations

24. The Lieutenant Governor in Council may make regulations.

1984-22-24.

25. [Spent. 1984-22-25.]

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

This Legislation is a convenience copy only, not a government
verified version. It may not be accurate or up to date.

Appendix G — Proclamation: "International Day for the Elimination of Racial Discrimination" (March 21, 1989)

PROCLAMATION

"International Day for the Elimination of Racial Discrimination" (March 21, 1989)

Proclaimed by the Honourable David Lam, Lieutenant Governor

WHEREAS the General Assembly of the United Nations, in its resolution 38/14 of December 20, 1983 and in its Programme for Action for the Second Decade to Combat Racism and Racial Discrimination 1983-1992, called upon all states and organizations to participate in the celebration of the Second Decade by intensifying and extending their efforts to ensure the rapid elimination of racism and racial discrimination;

RECOGNIZING that the government of British Columbia, at the Federal-Provincial-Territorial Ministerial Conference on Human Rights in Toronto on September 26-27, 1988, expressed its support for the Second Decade to Combat Racism and Racial Discrimination and the principles represented by it;

MINDFUL of the commitment of the government of British Columbia to on-going vigilance with regard to manifestations of racism by enforcement of the *Human Rights Act* of British Columbia and other anti-discrimination legislation; as well as through public education programs by the Council of Human Rights to heighten awareness of the importance of racial tolerance;

CONSIDERING that Our Lieutenant Governor, by and with the advice and consent of the Executive Council, has been pleased to direct by Order in Council in that behalf that a Proclamation be issued designating March 21, 1989, as "International Day for the Elimination of Racial Discrimination";

NOW KNOW YE THAT We do by these presents proclaim and declare that March 21, 1989, shall be known as "International Day for the Elimination of Racial Discrimination" in British Columbia.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our Province to be hereunto affixed.

WITNESS The Honourable David C. Lam, Lieutenant Governor of Our Province of British Columbia, in Our City of Victoria, in Our Province, this tenth day of March in the year of Our Lord one thousand nine hundred and eighty-nine and in the thirty-eighth year of Our Reign.

BY COMMAND.

Signed by the Honourable Bill Reid, Minister of Tourism and Provincial Secretary and the Honourable Bud Smith, Attorney General.

Appendix H — List of Publications

Human Rights Kit complete kit includes the following:

Employer's Guide

Hiring Guide

Disability and the Human Rights Act

Sexual Harassment and the Human Rights Act (also available in Punjabi, Chinese and French)

Human Rights Act Brochure

Legal Aid for Human Rights Complaints (Published by the Legal Services Society of British Columbia)

A Guide for Young People in the Workplace

After Your Complaint is Filed . . .

Conducting Hearings

Newsletter

Annual Report